



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

March 25, 2018

ISSUED BY: Rebecca Lovin
Chief, Office of Business Services
302-739-9206

SUBJECT: **AWARD NOTICE – Addendum #2**
NAT13103-LUMS_REC
DEVELOPMENT AND MANAGEMENT OF A HIGH ROPES AERIAL
ADVENTURE COURSE AT LUMS POND STATE PARK

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each contractor's contract shall be valid for a Ten (10) year period from May 1, 2013 through April 30, 2023. At the end of the ten (10) year contract term, if Delaware law permits the DIVISION to provide for an extension to the contract, then the parties may mutually agree to extend the term of the contract upon the same terms and conditions for two (2) additional five (5) year terms, another term as negotiated or by the maximum length provided by law.

2. VENDORS

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Adventure Forest, LLC t/a Go Ape
241 East Fourth Street
Suite 105
Frederick, Maryland 21701

Primary Contact:
Chris Swallow
chris@goape.com

3. SHIPPING TERMS

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Not Applicable under this Contract.

4. DELIVERY AND PICKUP

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Not Applicable under this Contract.

ADDITIONAL TERMS AND CONDITIONS

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5. CONCESSIONAIRE REQUIREMENTS

The CONCESSIONAIRE will be granted the right to plan, design, construct and operate an aerial adventure course that is subject to approval by the DIVISION as more particularly set forth herein. The CONCESSIONAIRE'S responsibilities under this contract shall include the following:

- a) Design and construct a high ropes aerial adventure course managed with the highest priority being protecting the natural features of Lums Pond State Park while providing visitors access and educational opportunities that are compatible with resource protection goals.
- b) Provide a high ropes adventure course that operates within the park's current infrastructure. The Division hereby approves the concept and location of the high ropes adventure course that is shown on ~~Schedule 2 attached hereto and made a part hereof within the area shown on Map A~~ **the attached "Site Map"**.

- c) Provide a safe high ropes adventure course for participants ranging from elementary age children up through adults.
- d) Provide an office and storage facility for daily operations.
- e) Hire and employ sufficient and properly trained personnel to safely build, operate and/or maintain the adventure course. The CONCESSIONAIRE is responsible for employment compensation, insurance, benefits and other expenses associated with employment of personnel.
- f) Provide a plan clearly outlining the safety procedures and guidelines that the CONCESSIONAIRE employs in their daily operation of the facility. ~~The Division hereby approves the plan shown on Schedule 6 attached hereto and made a part hereof.~~
- g) Notify the Lums Pond State Park Superintendent or designee, in writing within a reasonable time period after discovery by the CONCESSIONAIRE of any potential violations which, under terms of the Contract, the CONCESSIONAIRE carries the responsibility to correct.
- h) Provide a monthly usage report of all participants and revenue generated.
- i) Provide the Park Superintendent with two copies of the projected annual operating budget at the beginning of each fiscal year. The annual budget shall include the estimates of customer participation, operating expenditures, sales, projected revenue and anticipated contribution to State.
- j) Be responsible for providing quality products and services at market prices to park visitors. ~~The Division hereby approves the initial services and prices for same attached hereto as Schedule I-0 and made a part hereof.~~ **The Division reserves the right to approve or disapprove all products, services and pricing.**
- k) Abide by standards created by the American Society for Testing and Materials ("ASTM") and/or the **Association for Challenge Course Technology ("ACCT")** and provide the DIVISION with documentation that the ASTM and/or ACCT standards standards are met.
- l) Be responsible for notifying all participants that the daily entrance fee is required for entrance into the park.
- m) Shall work with the DIVISION to develop cross promotional marketing opportunities, programs and packages for park visitors.
- n) All employees will conduct themselves in an honest and courteous manner in all interactions with the DIVISION and public.

For a complete list of contract specifications please refer to the original award notice and bid solicitation document(s). Any contract specific documentation will be accessible through the hyperlink(s) provided on this contract's details page.

6. HOLD HARMLESS

The CONCESSIONAIRE expressly agrees to indemnify and hold the State of Delaware, the Department or any of its employees harmless from any and all claims arising out of any violations by the CONCESSIONAIRE of any law, rule, regulation or order, and from any and all claims for loss, damage, injury or death to persons or property of whatever kind or nature arising from the negligent operation of this contract by the CONCESSIONAIRE its officers, agents, employees, guests, etc. or from the negligence or misconduct of employees of the CONCESSIONAIRE while on the job. The CONCESSIONAIRE expressly agrees to indemnify the State of Delaware, the Department or any of its employees to the extent of any recoveries against them individually and/or jointly arising from it.

7. DIVISION RESPONSIBILITIES

- a) Provide an area located in Area I of Lums Pond State Park to erect a high ropes aerial adventure course. -See Attachment ~~Map A~~ **“Site Map”**. Such area shall be mutually agreed upon by the CONCESSIONAIRE. In the event that the CONCESSIONAIRE does not agree upon such location then the CONCESSIONAIRE may terminate this Contract, all money paid in advance by the CONCESSIONAIRE shall be returned and the CONCESSIONAIRE shall have no further liability hereunder. Once the area for the high ropes aerial adventure course has been agreed upon by the parties it shall not be changed without the prior written consent of the CONCESSIONAIRE, and as mutually agreed upon by the DIVISION.
- b) Reserves the right upon notice to CONCESSIONAIRE to enlarge, close and/or reduce the size of any area for the purposes of improvement, repair, construction or any other legitimate purpose insofar as to not limit the CONCESSIONAIRE's ability to operate the high ropes aerial adventure course in a safe manner. It is understood that any of the above action shall not entitle the CONCESSIONAIRE to any reduction or suspension of the CONCESSIONAIRE fee unless the CONCESSIONAIRE's ability to operate is impacted or otherwise approved by the DIVISION.
- c) Shall work with the CONCESSIONAIRE to develop cross promotional marketing opportunities and packages for park visitors.
- d) Shall waive the daily entrance fee to Lums Pond State Park for CONCESSIONAIRE's employees through a mutually agreed upon process.

8. RIGHTS GRANTED TO CONCESSIONAIRE

The CONCESSIONAIRE shall have the following rights under this contract subject to the approval of the DIVISION:

- a) The right for the CONCESSIONAIRE and its visitors, guests, invitees, employees, agents and contractors to pass to park in the parking lot and to pass to and from the high adventure course from the parking lot.
- b) The right for the CONCESSIONAIRE and its visitors, guests, invitees, employees, agents and contractors to use the public restrooms located at the park.
- c) The use of utilities in the park for the use of the high adventure course and the right to enter the park to install and make connections and to alter, renew, remove, replace or inspect such utility lines and to build additional utility lines as necessary for the conduct of CONCESSIONAIRE's business at the high adventure course subject to written approval of the DIVISION.
- d) The right of the CONCESSIONAIRE to permanently secure the high ropes adventure course by appropriate means such as fencing and locks from third party damage or interference when not being used by the CONCESSIONAIRE for the purposes of its business subject to prior written approval of the DIVISION.
- e) The right to use, store, inventory, purchase, dispose of and apply pesticides, provided, however that CONCESSIONAIRE shall comply with all DIVISION, Federal, State and local laws, rules and regulations regarding such pesticides.

9. TREES

The CONCESSIONAIRE shall not intentionally fell or prune any trees situated in the area of the high adventure course without the prior consent of the DIVISION (which consent shall not be unreasonably withheld, conditioned or delayed). In the event that the DIVISION does not respond to any request of the CONCESSIONAIRE to fell or prune any such trees within ten (10) days of CONCESSIONAIRE sending such request, then the DIVISION will be deemed to have consent to such felling and pruning.

10. INSPECTION

The CONCESSIONAIRE shall allow free access to authorized representatives of the DIVISION and other county, state or federal officials having jurisdiction for inspection purposes. The CONCESSIONAIRE shall further agree that if notified in writing by the DIVISION of its authorized representatives that any part of the contracted premises or the facilities thereof for which the CONCESSIONAIRE is responsible for services rendered are not in conformance with the contract granted then the CONCESSIONAIRE shall remedy all safety concerns posing serious threat, bodily injury or death must be remedied immediately or the course shut down until remedied. Notwithstanding anything contained herein to the contrary, when the Division or any other county, state or federal officials are accessing the premises then they shall provide at least 24 hours prior notice (unless an emergency in which event notice is not required) and during such assess they shall not interfere with the conduct of CONCESSIONAIRE's operation of such course during their inspection.

~~The CONCESSIONAIRE shall incorporate the below internal and external inspection program throughout the duration of the contact. The frequency and detail of these programs have been selected to ensure safety is not compromised at any time. Inspections include daily course checks, audits and annual operational reviews. The CONCESSIONAIRE shall incorporate the following safety programs at Lums Pond State Park:~~

Program	Conducted By	Frequency
Personal Protective Equipment (PPE) Check	Instructors & Site Manager	Daily & Monthly
Course Maintenance Check	Instructors & Site Manager	Daily & Monthly
Occurrence Reporting	Site Manager	Daily
Site Operations Review	Operations Director	Weekly
Safety Review	Site Manager & Operations Director	Twice Monthly
Site Audit	Site Manager & Operations Director	Quarterly
Annual Review	Site Manager & Operations Manger	Yearly
OSHA Visits	Operations Director & OSHA	Yearly
Course Construction and Maintenance Inspection	External Course Constructors	Yearly
Tree Inspection	External Certified Arbor culturist	Yearly

The CONCESSIONAIRE shall incorporate the internal and external inspection programs as set forth in the “Safety Plan” into its operations throughout the duration of the contract. Inspections include, but are not limited to daily course checks, audits and annual operational reviews. The CONCESSIONAIRE shall maintain at all times the Lums Pond State Park high ropes adventure course facilities in a safe manner in accordance with all Federal, State, and County laws, codes, and regulations.

The CONCESSIONAIRE shall fully document and record each inspection. To provide the DIVISION with safety assurance, the CONCESSIONAIRE will make all inspections documentation available throughout the length of the contract upon request. The CONCESSIONAIRE will have available and maintain all weekly, monthly, quarterly, and yearly safety course and equipment inspections in addition to all Risk Acknowledgements and Disclaimers for a period of 4 years.

11. MODIFICATIONS TO PREMISES

If any alterations, modifications, additions or improvements of the contracted premises and facilities are desired, a request first must be submitted to the DIVISION for approval and work shall not commence until receiving the DIVISION'S written approval and consent, whose consent shall not be unreasonably withheld or delayed. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the CONCESSIONAIRE unless the DIVISION consents to share a portion of said costs or provide necessary materials and/or labor. All applications shall include a proposed layout of the operation and a detailed description of any alterations, modifications and construction which are contemplated to set up the operation.

12. DAMAGE TO PREMISES

In the event State property or facilities are damaged beyond the approved modification to landscape to accommodate the high ropes aerial adventure course by reason of any act or omission of the CONCESSIONAIRE or its employees, the CONCESSIONAIRE shall repair at its own cost and expense the facility or property so damaged. The CONCESSIONAIRE shall be obligated to give the Park Superintendent verbal notification and prompt written notice of damage to the premises within ten (10) calendar days of CONCESSIONAIRE's discovery of the damage. Upon the failure of the CONCESSIONAIRE to make such repairs within fifteen (15) working days or a longer reasonable time period agreed upon by the DIVISION and the CONCESSIONAIRE, then after providing written notice to the CONCESSIONAIRE that the DIVISION will repair such damage if same is not repaired within an additional five (5) calendar days, the DIVISION will repair such damage at the cost and expense of the CONCESSIONAIRE and deliver a detailed invoice to CONCESSIONAIRE due and payable within thirty (30) days of the date of CONCESSIONAIRE's receipt of the invoice.

13. CONTRACT FEE

The CONCESSIONAIRE, as a fee for the contract and concession rights herein granted, agrees to pay to the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901, an annual contract fee of three percent (3%) of gross revenue or a minimum of \$15,000 annually which shall be prorated for the first year of this contract in a manner mutually acceptable to the parties based upon the opening of the business and shall be determined by the opening of the business. This contract fee will be calculated from the gross revenue received by the CONCESSIONAIRE on participant fees and any retail items sold by the CONCESSIONAIRE and which shall be reasonably determined by CONCESSIONAIRE. Participant fees will be calculated on a monthly basis using the CONCESSIONAIRE's custom, proprietary reporting system, to determine the number of participants and the respective revenue generated. Notwithstanding anything contained herein to the contrary, the contract fee shall not commence until thirty (30) days after the CONCESSIONAIRE has opened for business at the premises.

The annual contract fee shall be due in quarterly increments during the term of this license. Except as otherwise set forth herein, payments will commence three months following operation and be paid every three (3) months thereafter within thirty (30) days after the period ends.

The CONCESSIONAIRE agrees to submit a monthly receipts report from the CONCESSIONAIRE's proprietary reporting system by the 15th day of the following month as specified under this agreement to the DIVISION.

The CONCESSIONAIRE agrees to submit a tabulated annual gross receipts report for the period of operation on or before March 31 of the subsequent year to the DIVISION.

14. INTEREST PAYMENTS

Any payments from the CONCESSIONAIRE to the DIVISION which becomes due and which are not paid on or before the due date shall be subject to any interest penalty of twelve (12) percent per annum until paid, computed from the due date. When a late payment is received, the CONCESSIONAIRE shall be billed the amount of interest owed. This provision is in no way a waiver of the CONCESSIONAIRE'S obligation to make payments when they are due.

CONCESSIONAIRE shall submit all required and essential documents in a timely manner. A CONCESSIONAIRE shall be assessed a fee for the late submittal of documents, particularly, but not limited to, monthly and annual gross receipt reports, that are postmarked 60 days or more beyond the required dates of submittal, as stated in this contract. A \$50 administrative fee shall be charged for each month the documents have not been submitted.

15. RETAIL ITEMS FOR SALE

Additional items may be offered for sale upon advanced written approval by the DIVISION, which approval shall not be unreasonably withheld, conditioned or delayed. Any items using the name or image of Delaware State Parks shall be submitted for approval by the DIVISION prior to sale.

16. DISAPPROVAL OF ITEMS

The CONCESSIONAIRE agrees to withdraw from sale any item or service disapproved by the DIVISION. The Division's logo shall not appear on products sold by the CONCESSIONAIRE unless those products are purchased directly from the DIVISION's retail procurement program.

17. QUALITY AND PRICING

The CONCESSIONAIRE warrants that all services offered by it to the public shall be of the highest quality and consistent with the quality specifications provided by the CONCESSIONAIRE pursuant to this section. The CONCESSIONAIRE shall have the right and privilege to charge such prices and rates as are reasonable and fair. Except as otherwise set forth herein, all prices and price changes shall be subject to the prior written approval of the DIVISION, which approval shall be deemed granted in the event that the DIVISION does not respond within ten (10) business days of CONCESSIONAIRE sending such request.

The CONCESSIONAIRE shall submit a schedule of services to be offered at the beginning of each year and the fees charged for each service. The CONCESSIONAIRE agrees to offer only such services and merchandise at market rates consistent with CONCESSIONAIRE'S other aerial adventure ropes courses.

If, in the sole opinion of the DIVISION, any goods or services offered by the CONCESSIONAIRE are inconsistent with the image or reputation of the DIVISION or the State of Delaware, or are otherwise deemed unsuitable for sale or are considered over

-priced, the DIVISION shall request the CONCESSIONAIRE to immediately cease selling such goods or services or lower the price of said goods and services upon receipt of such in a written request from the DIVISION.

Notwithstanding anything contained herein to the contrary, at the time of the contract, the services offered by the CONCESSIONAIRE are approved and the pricing for the following services are accepted (prices do not include any eligible discounts) for the term of the contract, with the understanding that prices may increase or decrease during the term of the contract depending on market and economic factors as reasonably determined by the CONCESSIONAIRE. All pricing changes for the following services shall be approved in writing by the DIVISION in writing:

Treetop Adventure Course Ticket – 16 + years of age

Treetop Adventure Course Ticket – 10-15 years of age

TreeTop Adventure Junior Course Ticket – All Ages

18. OPERATING SCHEDULE

The CONCESSIONAIRE upon execution of the contract agrees to provide a concession service in accordance with a minimum schedule that includes but is not limited to the following:

- In-Season: June 20 to August 31, seven (7) days a week, 10 a.m. to 3 p.m.
- Off-Season: March 1-June 19 and September 1 to November 30, two to five days a week, dependent on weather and interest.
- Early Closing: Every effort is required to provide consistent hours of operation. CONCESSIONAIRE shall notify the Park Office prior to closing business for the day.

